

REMARKS

In view of the following remarks, Applicant respectfully requests reconsideration of the present application. No claims have been amended or cancelled and Claims 28-50 are currently pending in this application.

Double Patenting

Claims 28-37 and 48 were rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over Claims 1, 5, 8 and 9 of U.S. Patent No. 7,019,217 to Bryant ("Bryant") in view of U.S. Patent No. 2,166,458 to Berndt et al. ("Berndt"). Applicant traverses this rejection.

The required analysis in an obviousness-type double patenting rejection parallels the guidelines for a rejection under 35 U.S.C. 103(a). Thus, the Examiner's rejection must make clear (A) the differences between the inventions defined by the conflicting claims – a claim in the patent compared to a claim in the application; and (B) the reasons why a person of ordinary skill in the art would conclude that the invention defined in the claim at issue would have been an obvious variation of the invention defined in a claim in the patent. When considering whether the invention defined in a claim of an application would have been an obvious variation of the invention defined in the claim of a patent, the disclosure of the patent may not be used as prior art. See MPEP 804(II)(B)(1). The analysis for obviousness under 35 U.S.C. § 103 and the obviousness-type double patenting are not identical; for one thing, "the objects of comparison are very different: obviousness compares claimed subject matter to the prior art; non-statutory double patenting compares claims in an earlier patent to claims in a later patent or application." *Geneva Pharms., Inc. v. GlaxoSmithKline, PLC*, 349 F.3d 1373, 1378 n.1 (Fed. Cir. 2003).

Here, the Examiner did not provide the required showing. Independent Claim 28 recites a fitting for a cable having a composite core. The fitting includes a collet having, *inter alia*, an exterior defined by a truncated conical shape and a concentrically oriented lumen. The lumen has a length extending from a first end of the collet to a second end

of the collet, and a substantially constant interior radius along the length. The lumen is configured and dimensioned to frictionally engage the composite core over the length of the lumen. The fitting also includes a collet housing including, *inter alia*, a funnel-shaped interior that is configured and dimensioned to apply increasing compressive force to the exterior of the collet as the collet is compressed into the collet housing.

Claims 1, 5, 8 and 9 of Bryant are directed to a collet-type splice, the splice including two or more collet-type fittings and at least one connecting rod that couples the collet-type fittings together. The collet-type fittings include a collet having at least one lumen to mate with a composite core from a cable, and a collet housing that mates with the collet to compress the collet, where the collet housing has an opening to expose the lumen to enable the collet to mate with the composite core. The fitting also includes a compression element that couples with the collet housing to compress the collet inside the collet housing, where compressing the collet exerts a compressive and frictional force on the composite core.

Claims 1, 5, 8 and 9 of Bryant do not, by themselves, disclose all of the elements of pending Claim 28, *inter alia*, a lumen having a length extending substantially from a first end of the collet to a second end of the collet and a substantially constant interior radius along the length, where the interior radius of the lumen is configured and dimensioned to maintain the structure of the composite core. The Examiner concludes, however, that it would have been obvious to provide the lumen of Bryant with a substantially constant interior radius along the length of the lumen as taught by Berndt et al. to provide smooth contact between the collet and the core.

Berndt et al. disclose a connector for an electrical conductor. The connector includes a casing (12), and located within the casing (12) is a gripping member (22), the function of the gripping member (22) being to securely hold the conductive wire (18) to the casing (Col. 2, lines 40-45). Also located within the casing is a multi-segment gripping member (15) with a central bore (16), the member (15) being formed of a soft, low resistance metal and having "limited compressive ability" (Col. 2, lines 15-39). Such limited compressive ability is sufficient to insure good electrical contact (Col. 3, lines 60-69) to the conductive wire (Col. 1, lines 13-15). Thus, the member (15) is adapted to

lightly compress the wire to provide good electrical contact between the connector and the wire. However, the wire is mechanically attached to the connector by the serrated gripping member (22).

It would not have been obvious to modify the collet of Bryant et al., which functions to mechanically secure a composite core to a fitting, by substituting elements of the member (15) of Berndt et al. that provide "limited compressive ability" and that are only provided by Berndt et al. to ensure good electrical contact. In fact, the "limited compressive ability" of the member (15) of Berndt et al. would lead one to believe that a similar structure would not be capable of securing a composite core within the member. The member (15) of Berndt et al. and the lumen of Claim 1 of Bryant perform substantially different functions, and are adapted to grip different elements (i.e., a conductive wire vs. a composite core). It is the member (22) of Bryant et al. that is adapted to mechanically grip the conductive wire, and for this mechanical gripping function the gripping member (22) is not smooth, but is provided with serrations.

In view of the foregoing, Applicant respectfully submits that it would not be obvious to modify the claimed structure of Bryant in the manner suggested by the Examiner, and removal of this obviousness-type double patenting rejection is requested.

Claims 38-43, 45-47, 49 and 50 were provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 36 and 39-41 of copending U.S. Patent Application No. 11/306,951 ("951 application") and Claim 44 was provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over Claims 36 and 41 of the '951 application in view of U.S. Patent No. 1,539,962 to Seufert et al.

In response, Applicant submits herewith a Terminal Disclaimer with respect to U.S. Patent Application No. 11/306,951. Accordingly, Applicant respectfully requests the Examiner to withdraw this rejection.

Applicant also notes that a Supplemental Information Disclosure Statement was electronically submitted on October 15, 2008, before the mailing date of this Office

Action. Applicant requests that the Examiner acknowledge consideration of this Information Disclosure Statement with the next action taken by the Examiner.

Based upon the foregoing, Applicants believe that all pending claims are in condition for allowance and such disposition is respectfully requested. In the event that a telephone conversation would further prosecution and/or expedite allowance, the Examiner is invited to contact the undersigned.

Respectfully submitted,

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